IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.323/1995

Decided on.25.6.2007

Chamku Devi and others. **…Petitioner.**

Versus

State of H.P. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No*

For the Appellants : Mr. B.M. Chauhan, Advocate.

For the respondents : Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Mennakashi Sharma, Deputy Advocate Generals

---

Rajiv Sharma, J.

The present second appeal has been directed against the judgment and decree dated 28th March, 1994 passed by the District Judge, Shimla in Civil Appeal No. 20-S/13 of 1992.

The brief facts necessary for the adjudication of this second appeal are that the deceased Mohan Singh had filed a civil suit in the court of Sub Judge 1st Class, Theog on 17th April, 1989 for declaration and injunction. The plaintiff was found in illegal possession of land comprised in Khasra no. 11 measuring 2-16 bighas and khasra No.672/593/1 measuring 2-08 bighas total land measuring 5-04 bighas situate in Chak Chaidaina. According to the plaintiff, he was wrongly ejected by Assistant Collector 1st Grade, Kotkhai vide order dated 15th February, 1989. He had pleaded his possession over the suit land for the last more than 60-70 years through predecessor-in-interest and thereby claimed title by way of adverse

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

possession. The case set up by the defendant was that the suit was not maintainable due to non-joinder of necessary parties and service of notice under section 80 of the Code of Civil Procedure. The defendant had supported the order passed by the Assistant Collector Ist Grade, Kotkhai.

The trial court on the basis of the pleadings of the parties had framed the following issues:

1. **Whether the plaintiff has become owner in possession of suit land by way of adverse possession? OPP.**
2. **Whether the plaintiff is estopped to file the present suit as alleged? OPD.**
3. **Whether the suit is bad for non-joinder of necessary party? OPD**
4. **Whether no cause of action accrued to the plaintiff to file this suit, as alleged? OPD**
5. **Whether the plaintiff has no locus standi to file and maintain present suit? OPD**
6. **Whether no valid notice under section 80 CPC served upon the State of H.P.? OPD**
7. **Relief.**

The trial court had recorded the following findings on the aforesaid issues:

1. **No.**
2. **No.**
3. **No.**
4. **No.**
5. **No.**
6. **No.**
7. **The suit is dismissed as per operative portion of the judgment.**

The suit was dismissed by the trial court on 16th December, 1992. Feeling aggrieved by the judgment and decree dated 16th December, 1992, the deceased Mohan Singh prefered an appeal before the District

Judge, Shimla. The District Judge had framed the following points for determination:

1. **Whether the findings of the learned lower court on the issues framed are legal and correct, if so, its effect?**
2. **Final order.**

The District Judge had recorded the following findings on the aforesaid points:

Point No.1 Yes.

Final order. The appeal is dismissed per operative part of the judgment.

The appeal was dismissed by the District Judge on 28th March, 1994. This second appeal was filed by the deceased appellant Mohan Singh on 22.7.1994. The appellant Mohan Singh died on 31.10.1996 leaving behind widow Chamku Devi, sons Surinder Jina & Mohinder Jina; daughters Pushpa Chauhan and Saroj Chauhan. The Court had permitted these persons to be brought on record as legal representatives of the deceased appellant Mohan Singh vide order dated 20th December, 1999.

The second appeal was admitted on the following substantial question of law:

1. **Whether the appellant/applicant has become owner of the suit land by way of adverse possession?**

Mr. B.M. Chauhan, Advocate had strenuously argued that the judgment and decree passed by the appellate court on 28.3.1994 and 16.12.1992 passed by the Sub Judge 1st Class, Theog are not sustainable in the eyes of law.

The learned Advocate General had supported the judgments and decrees passed by the District Judge and Sub Judge.

I have heard the learned counsel for the parties and perused the record.

Shri Mohan Singh, plaintiff, had appeared as PW-1 in the trial court and had deposed that the suit land was in his possession for the last 25-35 years and before that it was in possession of his father who used to cultivate the same and prior to that his grand-father was in possession of the suit land. He had also produced the copy of notice under section 80 of the Code of Civil Procedure. Shri Keshav Nand, PW-2, had deposed that the plaintiff was in possession of the suit land for about 10-11 years. Sh. Ishwari Nand, PW-3, had also deposed that the plaintiff was in possession of the suit land for more than 30-35 years. The trial court had disbelieved the version of PW-1 to PW-3 and had returned the findings that the plaintiff had failed to prove his ownership by way of adverse possession. The appellate court had also considered the statements of PW-1 to PW-3 and after appreciating their statements had upheld the judgment of the trial court. The District Judge had relied upon ***S.M. Karim Versus Bibi Sakina,*** AIR 1964 SC 1254 and ***Kshitish Chandra Bose Versus Commissioner of Ranchi***, AIR 1981 SC 707.

Mr. B.M. Chauhan, Advocate had taken me through the record. He had drawn my attention to the statement of PW-1 Sh. Mohan Lal. Shri Mohan Lal had only deposed that his possession on the suit land was for the last 25-35 years before that it was in the possession of his father, who used to cultivate the same and prior to that his grand-father was in possession. Shri Mohan Lal, plaintiff had not specifically deposed when he came in possession over the suit land. PW-2, Shri Keshav Nand had testified that the possession of the plaintiff over the suit land was only 10-11 years old. PW-3, Ishwari Nand had only deposed that the possession of the plaintiff was 30-35 years old.

It is thus evident that the plaintiff had failed to prove when he came in possession over the suit land.

It has come on the record that the plaintiff had encroached upon the suit land and the matter was reported by the Patwari to the Assistant Collector 1st Grade and consequently the ejectment order was passed by the Assistant Collector 1st Grade on 15.2.1987.

The upshot of the above discussion is that the appellants have failed to prove that they have become owners of the suit land measuring 5-04 bighas situate in Chak Chaidaina by way of adverse possession. The Court will not interfere in the findings of fact recorded by the courts below. There is no question of law much less to say substantial question of law involved in the second appeal.

As a result, the appeal is dismissed. There shall be no order as to costs.

(Rajiv Sharma), Judge

25.6.2007
Awasthi